

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

R. GENE SMITH
and
LEE MATTINGLY

COMPLAINANTS

v.

HARDIN COUNTY WATER DISTRICT NO. 1

DEFENDANT

CASE NO.
92-395

O R D E R

On September 15, 1992, R. Gene Smith and Lee Mattingly filed a complaint with the Commission against Hardin County Water District No. 1 ("Hardin Water District"). The complaint states that Hardin Water District instituted a condemnation action against Mr. Smith and Mr. Mattingly in Meade Circuit Court in May of this year. According to the Complainants, Hardin Water District is condemning their property to construct a water production well. The Complainants object to this construction, principally because they believe it will pollute their underlying water aquifer thereby destroying the entire water supply accessible to Complainants and adjoining property owners.

For their relief the Complainants request the following:

(a) The Water District be prohibited from condemning their property;

(b) The Water District be prohibited from constructing the proposed water production well on their property;

(c) The Water District be required to explore alternatives, . . . to expand its water supply;

(d) Their costs herein expanded including a reasonable attorneys' fee; and

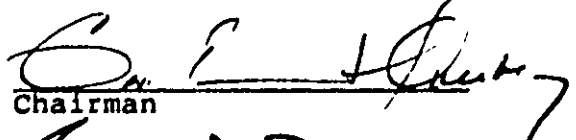
(e) Any and all other relief to which they may be entitled.

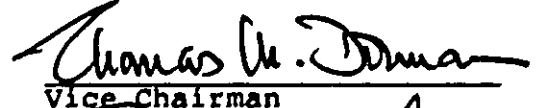
In examining the complaint, the Commission believes that the claim does not fall within the jurisdiction of the Commission. Mr. Smith and Mr. Mattingly's complaint concerns the condemnation of their property by Hardin Water District. The Commission has jurisdiction over complaints as to rates or service of a utility, but possesses no jurisdiction to adjudicate a claim arising out of a condemnation proceeding. Pursuant to KRS 74.090, a water district may condemn needed property in the manner provided in the Eminent Domain Act of Kentucky. KRS 416.540 et seq. The Eminent Domain Act places jurisdiction of condemnation proceedings within the circuit courts. KRS 416.570.

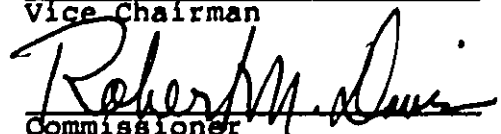
IT IS THEREFORE ORDERED that the complaint of Mr. Smith and Mr. Mattingly is hereby dismissed for lack of jurisdiction.

Done at Frankfort, Kentucky, this 22nd day of October, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director